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VOLUME I

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-638

TEXACO INC.,

Petitioner,

versus

STATE OF LOUISIANA, ET AL,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1974

No.

TEXACO INC.,

Petitioner,

versus

STATE OF LOUISIANA, ET AL,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana

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The petitioner, TEXACO INC., prays that a Writ of Certiorari issue to review the opinion and judgment of the Supreme Court of the State of Louisiana rendered in these proceedings on June 10, 1974.

OPINIONS BELOW

The opinion of the Sixteenth Judicial District Court for the Parish of St. Mary, Louisiana (Appendix A, Vol. II, p. 1) is not reported.

The opinion of the Court of Appeal, First Circuit (Appendix B, Vol. II, p. 72) is reported at 274 So.2d 402. The concurring opinion of Judge Tucker (Appendix B-1,

Vol. II, p. 114) is not reported. The dissenting opinion of Judge Landry (Appendix B-2, Vol. II, p. 115) is reported at 274 So.2d 422.

The original opinion of the Supreme Court of Louisiana (Appendix C, Vol. II, p. 140) is reported at 300 So.2d 154, and the dissenting opinion of Justice Barham (Appendix C-1, Vol. II, p. 169) is reported in the same volume at p. 167.

The opinion of the Louisiana Supreme Court on rehearing (Appendix D, Vol. II, p. 181) is reported at 300 So.2d 172, and the dissenting opinion of Justice Summers (Appendix D-1, Vol. II, p. 198) is reported in the same volume at p. 178.

JURISDICTION

The opinion and decree of the Louisiana Supreme Court on rehearing setting aside its original opinion and decree in favor of defendants and rendering judgment for plaintiffs was dated and entered on June 10, 1974. Timely applications for a rehearing by Texaco Inc. and by Placid Oil Company on its own behalf and for all other defendants were denied by order dated and entered on August 30, 1974. This petition for certiorari is being filed within 90 days from the latter date. Jurisdiction is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED FOR REVIEW

This case involves conflicting claims of the State of Louisiana and riparian owners to an area of land between the ordinary high and ordinary low water marks of an in-

land body of navigable water in St. Mary Parish, Louisiana, known as Six Mile Lake. Aligned on either side are the State's mineral lessee, Gulf Oil Corporation, and the holders of mineral leases from all other title claimants except Texaco Inc.

The federal questions presented for review can be stated and properly considered only in the light and within the context of certain fundamental principles of property law, some of which were established by early decisions of this Honorable Court and others added by the recent case of *Bonelli Cattle Company v. Arizona*, 94 S. Ct. 517, 38 L. Ed. 2d 526 (1973). These principles are as follows:

(1) Title to lands beneath all inland navigable waters up to the ordinary high water line passed from the Federal Government to the new States upon their admission to the Union under the constitutional principle of equality among all of the States. (the "equal footing doctrine"). See, *e.g.*, *Pollard's Lessee v. Hagan*, 44 U. S. 212, 11 L. Ed. 568 (1845); *Shively v. Bowlby*, 152 U. S. 1, 14 S. Ct. 548 (1893); *Goodtitle v. Kibbe*, 50 U. S. 471, 13 L. Ed. 220 (1850); *McGilvra v. Ross*, 215 U. S. 70, 54 L. Ed. 95 (1909)

(2) Although State and Federal domain are separated at the moment of Statehood at the ordinary high water elevation of such water bodies, State law determines whether a State has resigned in favor of, or granted to, the riparian or littoral owners part of the beds of such water bodies below the ordinary high water line which

would otherwise belong to the State in its sovereign capacity. See, *e.g., Shively v. Bowlby, supra; Barney v. Keokuk,* 94 U. S. 324, 24 L. Ed. 224 (1876); *Packer v. Bird,* 137 U. S. 661, 34 L. Ed. 819 (1890).

(3) Where a State has not relinquished or granted to riparian owners any area below the ordinary high water line of an inland sovereignty water body, State ownership does not remain permanently fixed at the ordinary high water elevation existing at the time of Statehood, but, under federal law, mechanically follows gradual changes in the course or shore lines of the water body which may occur from time to time thereafter. *Bonelli Cattle Company v. Arizona, supra.*

(4) Changes thus affecting State ownership and enuring to the private title are all such as result from natural or artificial causes and whether gradual and imperceptible or sudden and avulsive, the only exceptions being new lands formed by the action of the riparian owner himself, or cast up as a result of a public project in aid of the navigational servitude where the new land forms part of the project and is needed to serve its purposes. *Bonelli Cattle Company v. Arizona, supra.*

On rehearing in this case, the Louisiana Supreme Court recognized that with respect to all navigable water bodies within the purview of Civil Code Articles 509 and 510, the State has relinquished the bank (or area between ordinary high and ordinary low water) to the riparian

owner under Civil Code Article 455, but held that Six Mile Lake does not fall within the purview of these code articles and that the State has retained ownership of the bed of the water body up to its ordinary high water line. Having so held, the Court defined the high water line marking the limits of State ownership at an elevation coinciding exactly with the ordinary high water line of the water body as it existed when Louisiana was admitted into the Union in 1812. This includes all of the area in dispute.

The federal questions here presented are:

(1) Whether the State Court's decision that Six Mile Lake does not fall within the purview of the above code articles effected a retroactive change in the property law of the State resulting in the taking of private property without compensation in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States;

(2) Alternatively, whether the establishment of a high water line coinciding with the original high water elevation existing at the time of Statehood violates the rule of property applied by this Honorable Court in the *Bonelli* case, to-wit: that State ownership of water bottoms acquired under the equal footing doctrine does not remain fixed at the original high water line but changes mechanically with gradual changes in that elevation thereafter occurring.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Amendment XIV, Sec. 1:

"* * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

L. S. A., Civil Code, Article 450:

"Things, which are common, are those the ownership of which belongs to nobody in particular, and which all men may freely use, conformably with the use for which nature has intended them; such as air, running water, the sea and its shores."

L. S. A., Civil Code, Article 455:

"The use of the banks of navigable rivers or streams is public; accordingly every one has a right freely to bring his vessels to land there, to make fast the same to the trees which are there planted, to unload his vessels, to deposit his goods, to dry his nets, and the like.

"*Nevertheless the ownership of the river banks belongs to those who possess the adjacent lands.*" (Emphasis ours)

L. S. A., Civil Code, Article 457:

"The banks of a river or stream are understood to be that which contains it in its ordinary state of high water; for the nature of the banks does not change, although for some cause they may be overflowed for a time.

"Nevertheless on the borders of the Mississippi and other navigable streams, where there are levees, established according to law, the levees shall form the banks."

L. S. A., Civil Code, Article 509:

"The accretions, which are formed successively and imperceptibly to any soil situated on the shore of a river *or other stream,* are called alluvion.

"The alluvion belongs to the owner of the soil situated on the edge of the water, whether it be a river *or stream,* and whether the same be navigable or not, who is bound to leave public that portion of the bank which is required by law for the public use." (Emphasis ours)

L. S. A., Civil Code, Article 510:

"The same rule applies to derelictions formed by *running water* retiring imperceptibly from one of its shores and encroaching on the other; the owner of the land, adjoining the shore which is left dry, has a right to the dereliction, nor can the owner of the opposite shore, claim the land which he has lost.

"This right does not take place in case of derelictions of the sea." (Emphasis ours)

STATEMENT OF THE CASE

(The Water Body Involved)

A panoramic view of Six Mile Lake and the Atchafalaya River System to which it belongs is afforded by the Official Map of the State of Louisiana appearing in the record as Exhibit P-13. For the benefit of the Court we have reproduced a segment of that map and annex the same hereto as Appendix I (*infra,* p. 1a). As reflected thereby, Six Mile Lake is an integral part of a dynamic system of flowing water commencing at the confluence of the Atchafalaya, Mississippi and Red Rivers northeast of Simmesport, Louisiana and flowing to the Gulf of Mexico. This water body is not to be compared with the elliptical lakes (shown on the map) in the southern part of the State (Grand Lake in Cameron Parish, Calcasieu Lake, White Lake and Lake Pontchartrain) either as to configuration, water shed, or dynamics of the water systems involved.

It is admitted by the pleadings that Six Mile Lake was navigable when Louisiana was admitted into the Union in 1812 and remains so to the present time. Shortly after Statehood, an early explorer found that the water body had a channel 4-1/2 fathoms (or 27-1/2 feet) deep. Journal of James Leander Cathcart, Exhibit D-111 of the record, p. 761. It was described by the Chief of the U. S. Engineers in a report to Congress in 1914 as an enlargement of the Atchafalaya River (Exhibit D-148 of the record) and is still treated as a segment of the river by the Army Engi-

neers (Exhibit D-102 of the record, pp. IX, X, 18, and A-13). Navigational work in the basin in recent years increased the flow and velocity of the Atchafalaya River resulting in deltaic deposits in the bed of Six Mile Lake commencing at the mouth of the river and extending southward. Little or no deltaic deposits occurred in Six Mile Lake prior to this navigational project, clearly reflecting that under natural conditions there was no appreciable difference in the currents of the river and the Lake. See chart of progressive alluvial deposits, Exhibit D-103 of the record.

It is not open to dispute that Six Mile Lake is not formed by the waters of the sea. It connects with the Gulf of Mexico by the winding course of the Lower Atchafalaya River over a distance of approximately twenty miles. As reflected by daily gauge readings in the record it is subject to fluctuating water stages far in excess of tidal influence. The water body is subject to some tidal action (about the same as in the Mississippi River at New Orleans), but its waters have never been more than brackish at any time. It is essentially a body of sweet water.

The detailed findings of the Trial Judge and the Court of Appeal in this case as to the nature and characteristics of Six Mile Lake were given full approval by the Louisiana Supreme Court in its original opinion handed down on December 3, 1973. That Court did not change its original findings on rehearing and they remain the factual structure and basis of this case. In substance it was found, and is not open to dispute, that from time immemorial Six Mile Lake has carried a substantial portion of the tremendous volume of water flowing to the sea through the Atchafalaya River System.

(The Title Dispute)

The State of Louisiana and its mineral lessee, Gulf Oil Corporation, claim the fee title and mineral leasehold rights in an area of land located between the traverse line of Sections 49, 50 and 68, Township 15 South, Range 11 East, St. Mary Parish, Louisiana (as shown on the official township plat approved May 19, 1842) and the ordinary low water line of Six Mile Lake. This area comprises the bank of Six Mile Lake as it existed at the time of Statehood, and an additional accretive area which built up in recent years above the ordinary low water line of the water body. It is admitted by the pleadings that the traverse line shown on the official township plat represents the ordinary high water line of Six Mile Lake at the time of Statehood. Defendants are (1) the riparian owners of Sections 49, 50 and 68 and (2) the mineral lessees of the disputed area from all the riparian owners except Texaco Inc., the fee owner of an undivided 1/2 interest in Section 68.

The suit was brought on by the completion of three producing oil and gas wells on the area in dispute by the mineral lessees of the riparian owners, and includes a demand for the value of all production obtained.

Bonelli Cattle Company v. Arizona, supra, was decided after the Louisiana Supreme Court had handed down its decision on original hearing in favor of defendants, but the decision in the *Bonelli* case was before the Court at the time this case was presented on rehearing.

On original hearing the Louisiana Supreme Court decided for defendants, holding that Six Mile Lake is a

stream within the meaning of Civil Code Articles 509 and 510 relating to accretions and derelictions and that the State had relinquished its banks and the accretions thereto to the riparian owners under Civil Code Article 455. On rehearing, the Court re-classified Six Mile Lake as a water body not falling within the purview of these code articles and awarded ownership of the area in dispute and the production therefrom to the State and its mineral lessee.

The State Court's determination that Louisiana had not relinquished to the riparian owners any part of the bed of the above water body below the ordinary high water line was a sudden and retroactive change in the established property law of the State, has deprived defendants of their property without compensation in violation of due process of law, and represents a serious erosion of private property rights in the State of Louisiana. The Court's further determination that the original ordinary high water line of the water body, as opposed to the present ordinary high water line, marks the limits of State ownership, was directly contrary to the *Bonelli* case, and had the effect of awarding to plaintiffs under state law property belonging to defendants under the applicable federal common law.

(How Federal Questions Were Raised and Passed Upon)

The federal questions here involved (*supra*, p. 5) were presented in this case for the first time as the result of the Louisiana Supreme Court's decision on rehearing, handed down on June 10, 1974, setting aside its original opinion and decree in favor of defendants and rendering

judgment for plaintiffs. Petitioner expressly raised these federal questions by timely application for a rehearing (Appendix II, *infra*, p. 2a). This application was denied by order of Court, without supporting opinion, dated and entered on August 30, 1974 (Appendix III, *infra*, p. 14a).

REASONS FOR ALLOWANCE OF WRIT.

By Civil Code Article 455 the State has relinquished in favor of those owning adjoining lands the banks[1] of all navigable rivers and streams within its borders.[2] Under Civil Code Articles 509 and 510 accretions formed on the banks of rivers and other streams and derelictions formed by "running water" retiring from one shore and encroaching on the other belong to the party who owns the bank under Article 455. It is conceded by all parties and was recognized by the Louisiana Supreme Court in this case that the rivers and streams along which the State has relinquished the banks under Article 455 are all such water bodies as are subject to the laws of accretion and dereliction set forth in Articles 509 and 510.

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1 The bank or shore of a water body is that which contains it in its ordinary state of high water (Civil Code Article 457), or stated otherwise, the area between ordinary high and ordinary low water *(Shively v. Bowlby*, 152 U.S. 1, 14 S.Ct. 548, 552 (1893); Words & Phrases, Permanent Edition, Vol. 39, pp. 296, 297).

2 The second paragraph of Civil Code Article 455 refers to the ownership of river banks only. However, "river" is a mistranslation of the French text of the earlier versions of Article 455 in the Civil Codes of 1808 and 1825 in which the word "fleuve" was used. The proper translation of "fleuve" is "stream". Inasmuch as rivers are also included in the generic term "stream", plaintiffs conceded in their brief on rehearing and the Supreme Court recognized (Appendix D, Vol. II, p. 183) that Article 455 relinquishes the banks of both rivers and streams to the owners of adjoining land.

Although under the *Bonelli* case it is now settled that federal common law governs accretions formed in all water bodies (regardless of classification) acquired under the equal footing doctrine, the State law on this subject (Civil Code Articles 509 and 510) must be considered for the purpose of classifying those water bodies along which the State has relinquished the banks to the riparian owners. Thus the principal inquiry here is the classification of water bodies for the limited purposes of Louisiana law governing accretion and dereliction and not their classification for other purposes by cartographers or geologists.[3]

The Louisiana Jurisprudence

The recent case of *State v. Cockrell,* 162 So. 2d. 361, cert. denied 164 So. 2d. 350 (1964) dramatically underscores the sudden and retroactive change effected by the present decision in the jurisprudence of Louisiana with respect to the classification of water bodies for purposes of our laws of accretion and dereliction.

The *Cockrell* case and this case are identical. Both involve conflicting claims of the State and riparian owners to areas between the ordinary high and low water marks of the same water body — Six Mile Lake. The issues in the two cases are the same and the *disputed areas are con-*

3 This is fully recognized in the State's application to the Louisiana Supreme Court for a writ of review to the Court of Appeal in this case. At page 30 of that application the State declared that "determination of the question whether a body of water is a river or a stream within the meaning of Article 509 of the Civil Code or another body of water to which Article 509 does not apply is not to be made on the basis of terminology prevailing in the science of geology — what may be defined as a lake in the field of geology may be a stream under Article 509, or vice versa."

tiguous. In each case production of oil and gas had been obtained by the riparian owners from the area in dispute.

In *Cockrell* the title of the riparian owner was held to extend outward to the ordinary low water line of the water body. In the present case State ownership was recognized as extending far inland to the ordinary high water line of the same water body. The irregular frontage on Six Mile Lake, thus judicially created for adjoining riparian owners, bears mute evidence of this sudden change in state property law.

The Louisiana Supreme Court unanimously denied writs in the *Cockrell* case, not perfunctorily, but because the Court found "no error of law" on the basis of "the facts found by the Court of Appeal".[4] The law of the *Cockrell* case, thus approved, was that Six Mile Lake, as a body of moving or flowing water, is a stream within the meaning of that term as used in Civil Code Articles 455, 509 and 510, and that the banks of the water body and the accretions thereto belong to the riparian owner under the provisions of those articles.

On the way to its decision in *Cockrell,* the Appellate Court exhaustively reviewed the Louisiana jurisprudence on this subject and ruled that the cases of *Amerada Petroleum Corporation v. State Mineral Board,* 203 La. 473, 14 So.2d 61 (1943), and *Esso Standard Oil Company v. Jones,* 233 La. 915, 98 So. 2d 236 (1957) adopting the running or moving water principle of water body classification for purposes of our laws relating to accretion

4 The facts found by the Court of Appeal in *Cockrell* are the same found by the Trial Court, Appellate Court and Supreme Court in the present case as readily shown by the opinions of these several courts.

and dereliction had clearly overruled *State v. Erwin*, 173 La. 507, 138 So. 84 (1931) which had adopted an arbitrary "expansive water body" rule as the basis of classification. The Louisiana Supreme Court on original hearing in the present case reached exactly the same conclusion.

The principal question presented by this petition for a writ of certiorari is whether the rule of *Erwin* on the one hand, or the rule of *Amerada* and its progeny on the other, represents the property law of this State. Inasmuch as all Courts in the present case have found that Six Mile Lake, as part of a dynamic water system, is a body of flowing or moving water, the application of the *Erwin* rule to that water body can be regarded only as a rejection of the *Amerada* principle and a sudden and retroactive change in the property law of the State.

(The Erwin Case)

Erwin holds that Lake Calcasieu in Cameron Parish, Louisiana, through which the Calcasieu River flows on its way to the sea, is not within the purview of Civil Code Articles 509 and 510 on the *sole ground* that it is *too expansive* to be considered as a stream within the purview of those articles. The Court recognized that Articles 509 and 510 are the same as French Civil Code Articles 556 and 557 from which they are derived, and that in France a water body like Calcasieu Lake through which a river flows would be considered a section of the river and subject to the laws of accretion and dereliction as a body of flowing water.[5] However, the Court arbitrarily dismissed

5 Although the *Erwin* Court considered Calcasieu Lake as a moving body of water, its currents are not comparable to Six Mile Lake. The Court stated that the channel of the river through this lake was only slightly deeper than the lake itself and had a perceptible current only when the river due to heavy rains was high. In ordinary stages the Court said "there is, if any, *only an almost imperceptible current in the channel.*" (Emphasis ours)

that consideration and summarily disposed of the issue because it considered the expansive water body idea to be "the better view". The reason for so concluding was not disclosed and is not apparent in view of the rationale for the doctrine of accretion and historic derivation of our code articles on this subject.

The rationale for that doctrine is clearly stated in the opinion of this Honorable Court in the *Bonelli* case. Briefly, its purposes are to (1) maintain the riparian quality of the property, thereby fulfilling the owner's expectancy that his land will remain bounded by water; (2) preserve the special value of the property inherent in its quality of riparianness; and (3) compensate the riparian owner for the losses he might sustain by the wandering of the water over his land or by the taking of his property in the exercise of the navigational servitude by the State or General Government. All of these considerations are particularly applicable to bodies of running or moving water as they are peculiarly endowed with natural capacity for creating the changes to be regulated and are especially useful for navigational purposes.

The carrying and deposition of sediments and the erosion of shore lines are typical current phenomena. The *Erwin* Court does not say why size or expanse should be a critical determination. Indeed there is no reason why an expansive body of moving water of great force should be considered beyond the provisions of our laws relating to accretion and dereliction, and a smaller water body, with less capacity for undergoing physical changes, should be governed by those laws.

Civil Code Articles 509 and 510 represent our entire codal law with respect to accretion and dereliction, and it

is fair to assume that the redactors of the code intended these articles to carry out the underlying purposes of the doctrine of accretion. The inclusion or exclusion of water bodies according to size or expanse is purely arbitrary and does not fit those purposes. This is fully borne out by the historical derivation of these code articles.

A great part of our Civil Code is taken from the Civil Code of France (Code Napoleon), hence corresponding articles of the French Code and their interpretation by French doctrine are of critical importance in the interpretation of the Louisiana Code. Louisiana Civil Code (Dainow), 1972 Compiled Edition, page VII. In *Straus v. City of New Orleans*, 166 La. 1035, 118 So. 125 (1928), the Louisiana Supreme Court expressly recognized that the opinions of the French Commentators are as appropriate in interpreting our Code as they are in interpreting corresponding articles of the French Code.

Our Code Articles 509 and 510 and the earlier versions of those articles (Articles 13 and 14 of the Code of 1808 and Articles 501 and 502 of the Code of 1825) are identical with French Code Articles 556 and 557 from which they were derived.[6]

Under the French interpretation only still or immobile water bodies are excepted from French Code Articles 556

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6 The Accretion Article of the French Civil Code (Article 556) and the French text of the corresponding articles of our Civil Codes of 1808 and 1825 use the French words "fleuve and riviere" which properly translate to "river and stream" as used in Article 509 of our present Code. The English text of the earlier Louisiana Codes erroneously translated fleuve and riviere as river and creek. However, in this situation it is well settled that the French text governs the interpretation. *Straus v. City of New Orleans*, 166 La. 1035, 118 So. 125 (1928) and authorities therein reviewed.

and 557. Hence a lake or expansive water body which is not immobile because a river flows through the same on the way to the sea falls within the provisions of these articles.[7]

The express provisions of the French and Louisiana Codes fully support the foregoing interpretation. The dereliction article of both codes refers to water bodies embraced within its provisions only as "running water". This characterizes the rivers and streams of the accretion article. The only water body expressly excepted from the accretion and dereliction articles of these codes is the Sea,[8] and this leads to the inevitable implication that all other water bodies of moving or flowing water regardless of expanse are within the purview of these articles.

(The Amerada Case and its Progeny)

In *Amerada Petroleum Corporation v. State Mineral Board,* 203 La. 473, 14 So. 2d 61 (1943), referred to hereinafter as *"First Amerada"*, the Louisiana Supreme Court considered the reason and purpose for our laws governing accretion and dereliction in the light of their historical derivation, and on that basis squarely held that (a) bodies of moving or flowing water are covered by these

7 This is fully borne out by a review of the French authorities in both the majority and dissenting opinions in the *Erwin* case. The French view so expressed, appears to be uniform. Marcade, Explication Theorique et Pratique du Code Napoleon, Tit. II, Sec. 435, p. 417; Demolombe, Code Napoleon, t. 10, Distinction des Biens, liv. 2, p. 23, n. 25; Dalloz, Nouveau Code Civil, p. 922, n. 1, sub-art. 558; Aubry et Rau, Droit Civil Francaise, t. 2, p. 384, n. 203; Fuzier-Herman, Repertoire du Droit Francaise, t. 25, p. 783, n. 10, sub. Lac, t. 4, p. 57, sub. Alluvion, nos. 45, 46, 47 et 48; Laurent, Cours de Droit Civil, t. 1, p. 499, n. 543; Dictionnaire Generale du Notariat et du Droit Civil Moderne, t. 4, p. 350, sub. Lac.

8 Louisiana Code Articles 450, 510; French Code Articles 538, 557.

laws because of their natural capacity to form accretion, and (b) relatively still or immobile water bodies are excluded because they lack capacity to create these formations. The Court recognized that expansive water bodies designated or referred to as "lakes" are within the purview of these laws if they are bodies of moving or flowing water and that our laws, like the laws of France, exclude only lakes which are still or immobile water bodies.

First Amerada involved accretions formed along Lot 4 of Section 31, Township 11 South, Range 10 East. A later case, *Amerada Petroleum Corporation v. Case,* 210 La. 630, 27 So. 2d 431 (1946), presented the same issues with respect to accretions formed along Lot 5 of the same section. In each case the accretive area was awarded to the riparian owner. In order to so hold, the Court had to decide that the bank to which these accretions attached belonged to the riparian owner; otherwise the accretions would have enured to the State.[9] The legal basis for these decisions, of course, was that the banks in question were along a water body covered by Civil Code Articles 509 and 510 as to which the State had relinquished ownership of the banks under Civil Code Article 455.

The *Amerada* cases are controlling here not only on the basis of the flowing water principle, which has particular application to Six Mile Lake, but because these cases and the present case involve portions of the *same water body.*

The foregoing is graphically demonstrated by Appendix IV (*infra,* p. 16a), and Appendix V (*infra,* p. 17a).

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9 If the State owned the bank, it would also own the accretions to the bank under Civil Code Article 509.

Appendix IV is a reproduced segment of Exhibit P-10-A of the record (a composite plat compiled from official township plats) and affords a panoramic view of the entire area, including the disputed areas in the *Amerada* cases and in the present case. Appendix V is a reproduced composite of two official township plats (used in compiling Exhibit P-10-A) embracing only the area involved in the *Amerada* cases, and affords an enlarged view of the same area as it appears on Appendix IV. For emphasis, the *Amerada* areas are colored red on these plats, and the area of the present case as shown on Appendix IV is colored blue. It is evident from these exhibits that the "bank" areas in the *Amerada* cases and the "bank" area in this case belong to the same water body — Grand Lake. The holding in the *Amerada* cases, therefore, is specific authority for an identical decision in the present case with respect to the bank of Six Mile Lake (a segment of Grand Lake) and the accretions thereto.

In *Esso Standard Oil Company v. Jones*, 233 La. 915, 98 So. 2d 236 (1957), the moving or flowing water body standard for classifying water bodies within Civil Code Articles 509 and 510 again received the approval of the Court. The case has special significance because the Court quoted fully from the opinion in *"First Amerada"* and expressly adopted the same as the opinion of the Court.

It was at this stage in our jurisprudence that the *Cockrell* case was presented to the Court and the opinion of the Court of Appeal in that case summed up everything that had gone before in our jurisprudence and applied the flowing or moving water body rule to Six Mile

Lake. The Louisiana Supreme Court approved *Cockrell*, as already noted, because the decision was *legally correct*.

(The Decision of the Louisiana Supreme Court on Rehearing in the Present Case — Its Retroactive Reversal of the Established Jurisprudence)

As stated in the preface to its final opinion, the Louisiana Supreme Court was motivated in granting a rehearing in this case because of the "importance of the legal issues to the people of the State of Louisiana" — and because "the decision has far reaching consequences affecting the State's natural resources, ecology and the public fisc."

There is not an iota of evidence in the record that a decision for the riparian owners in this case would have the far reaching public consequences referred to by the Supreme Court. It is obvious that the State would like to have the expansive water body principle revived as such a rule would necessarily limit the number of water bodies in the State along which the State has relinquished the banks under Civil Code Article 455. However, classification of water bodies for purposes of Article 455 cannot be affected in any way by considerations of ecology, environment and the public fisc. The issue involved is one of property law to be determined on the basis of conditions existing when Louisiana was admitted to Statehood in 1812. It was then, not later, that the State relinquished its sovereignty ownership of banks to riparian owners. Present day problems concerning areas of so-called public interest, even if real, do not justify the taking of private property for public purposes without compensation.

The Louisiana Supreme Court expressly stated in its opinion on rehearing that *First Amerada* did not overrule *Erwin* and that *Erwin* remains the law of this State. *Erwin* and *First Amerada* being totally inconsistent, the effect of the present decision of the Court is to revive *Erwin* and to overrule *First Amerada* and its progeny.

The conflict between these decisions is self-evident. *Erwin* held that expansive bodies of water are not subject to our laws of accretion and dereliction even though they are bodies of moving or flowing water. *First Amerada* held that all bodies of moving or flowing water are within the purview of those laws. The *Erwin* method of water body classification is based on physical characteristics pertinent only to geologists and cartographers. The *Amerada* method of classification is for the limited purposes of our laws governing accretion and dereliction and conforms to the rationale for the doctrine of accretion and the historical derivation of our code articles on this subject.

In the present case the Court revived the *Erwin* rule by classifying Six Mile Lake as a "lake" on the basis of physical characteristics having no relation whatsoever to the purposes and meaning of our laws governing accretion and dereliction or to the capacity of the water body to create these formations.[10]

10 This is clearly reflected by the following physical characteristics which the Court listed in support of its decision: (1) The size of Six Mile Lake — 30 miles long by 3 to 10 miles wide. (2) Its designation as a lake on official maps. (3) Its thalweg depth of 8 feet. (4) The water body is subject to the ebb and flow of the tide and has brackish water. (5) Its width as compared to the Atchafalaya River. (6) Its currents are reduced as they enter the lake so that 75% of the sediment is deposited in Six Mile Lake and only 25% carried out. None of these characteristics detract from the capacity of Six Mile Lake as a body of moving water to form accretions and derelections. Nevertheless, several of these items

Given the established fact that Six Mile Lake is a segment of the Atchafalaya River System and carries the enormous flow of the waters of the Atchafalaya Basin to the sea, the Court's decision on rehearing can only mean that moving or flowing water is no longer a consideration in water body classification.

The special capacity of a body of moving water to form accretions was considered unimportant because the Court concluded that where accretion is found, the capacity of the water body to form the same is automatically established. Thus any type of water body in which a minimal amount of accretion may be formed would be

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are deserving of special comment. Item 3: Shortly after 1812 when Louisiana relinquished to riparian owners the banks of water bodies covered by Civil Code Articles 509 and 510, Cathcart, an early explorer, found that Six Mile Lake had a depth of 4-1/2 fathoms, or 27-1/2 feet. (Exhibit D-111 of the record, p. 761). Deltaic deposits in the bed of Six Mile Lake brought on by navigational work of the U.S. Engineers in recent years accounts for the shallower depth referred to by the Court (See Statement of the Case, *supra*, p. 9). Item 4: Since Six Mile Lake carries the tremendous flow of water from the Atchafalaya River System to the Gulf, it is evident that tidal influence in the water body is minor and that its waters are never more than brackish. The record shows that brackish water and equal tidal influence are found in the Mississippi River at New Orleans. Item 5: Comparative width of Six Mile Lake with the Atchafalaya River is totally irrelevant. As shown by their historical derivation, our code articles governing accretion and dereliction were intended to apply to lakes through which rivers and streams flow. In the *Amerada* cases the comparative width of the water body involved and streams entering it did not affect the decision. Item 6: Prior to navigational work by the U.S. Engineers in recent years, the currents entering Six Mile Lake were not significantly diminished. Had it been otherwise, deltaic deposits would have long filled the bed of the water body. Significant deposits of that nature did not occur until channel work commenced in recent years (See Statement of the Case, *supra*, p. 9)

subject to our laws of accretion and dereliction.[11] By this simplistic approach the Court placed a dynamic water body like Six Mile Lake in the same category as still or immobile bodies of water with little or no capacity for accretive changes.

The Court was able to cite no relevant precedents in support of its decision besides *Erwin* which was overruled as to water body classification by *First Amerada. Miami Corporation v. State,* 186 La. 784, 173 So. 315 (1937) and *Doiron v. O'Bryan,* 218 La. 1069, 51 So. 2d 628 (1951), discussed by the Court, clearly have no application.

Miami involved title to land which, by erosion, had become part of the bed of a navigable water body in Cameron Parish known as Grand Lake. Classification of the water body was not presented for decision because the Court found that lands becoming so submerged belong to the State regardless of whether the water body involved is a river, stream, lake or otherwise. On this point *Miami* expressly overruled *Erwin* which had held that lands submerged beneath Lake Calcasieu remained vested in private ownership.

The *Doiron* case involved the conflicting title claims of successful defendants in the *Erwin* case to part of the same submerged land involved in that case. Classification of the water body (Lake Calcasieu) was not before the

11 Insignificant accretion may take place even in relatively still or immobile water bodies by excessive rain water flowing from the shore and the action of wind blown currents.

Court for decision, but only whether the property in suit formed part of plaintiffs' title or defendants' title. *Erwin* was then final and everything it decided was *res adjudicata* as to the parties in *Doiron*. *Erwin* having recognized the title of the riparian owners to the submerged area on the sole grounds that the body of water involved was a lake, it is evident that the classification of the water body could not be reconsidered by the Court in the *Doiron* case.

All other cases cited in the Louisiana Supreme Court's opinion on rehearing and all of those cited by plaintiffs in the State Courts are not precedents for the classification of water bodies under our laws of accretion and dereliction. Some of these cases involve Lake Pontchartrain and are not pertinent because that water body has been judicially recognized as an Arm of the Sea and exempt by express codal provision from our laws of accretion and dereliction.[12] In all other cases cited[13] the classification of

12 See, *e.g.*, *Bruning v. City of New Orleans*, 165 La. 511, 115 So. 733 (1928); *Burns v. Crescent Gun and Rod Club*, 116 La. 1038, 41 So. 249 (1906); *Zeller v. Southern Yacht Club*, 34 La. Ann. 837 (1882). Decisions classifying Lake Pontchartrain as an Arm of the Sea were undoubtedly influenced by the fact that the water body originated from the Gulf of Mexico by a delta finger of the Mississippi River uniting with the mainland. 8 Tulane Law Review, 272, 275.

13 *Sapp v. Frazier*, 51 La. Ann. 1718, 26 So. 378 (1899); *Slattery v. Arkansas Natural Gas Company*, 138 La. 793, 70 So. 806 (1916); *State v. Capdeville*, 146 La. 94, 83 So. 421 (1919); *Atchafalaya Land Co. v. James*, 146 La. 109, 83 So. 426 (1919); *State v. Bozeman*, 156 La. 635, 101 So. 4 (1924); *Gulf Refining Company v. Grace*, 165 La. 979, 116 So. 405 (1928); *State v. Jefferson Island Salt Mining Company, Inc.*, 183 La. 304, 163 So. 145 (1935); *Miami Corporation v. State*, 186 La. 784, 173 So. 315 (1937); *Evans v. Dugan*, 205 La. 398, 17 So.2d 562 (1944); *State v. Aucoin*, 206 La. 786, 20 So.2d 136 (1944).

the water body for purposes of our laws of accretion and dereliction was either not presented for decision or was not discussed at all because it was conceded by the litigants and assumed by the Court that the water body involved was not within the purview of those laws.

In its original decision in the present case, the Louisiana Supreme Court reviewed the entire jurisprudence and concluded that the only pertinent cases for discussion were *Erwin*, the *Amerada* cases, *Esso* and *Cockrell*. Having considered all of these cases, the Court concluded that the *First Amerada* and its progeny represent the law of this State.

The Alternative Federal Question Presented for Review — the Proper Location of the Present Ordinary High Water Line of Six Mile Lake.

This question will be reached only in the event it is concluded that the State did not relinquish the banks of Six Mile Lake to the riparian owners and owns up to the ordinary high water line of the water body.

Having so held, the Louisiana Supreme Court established the limits of State ownership at an elevation which coincides exactly with the original ordinary high water line of Six Mile Lake. This is directly contrary to the ruling of this Honorable Court in the *Bonelli* case and represents the application of State law in an area governed by the federal common law.

Where navigable water bodies acquired under the equal footing doctrine are involved, and the classification of the

water body under State law is such that the ordinary high water line marks the limits of State ownership, the State's title under the principles established in the *Bonelli* case extends only to the present high water line, and any emergent area existing between such line and the high water elevation at the time of Statehood becomes an accretive area under federal law which enures to the riparian owner.[14]

Prior to the *Bonelli* case it was the established rule in Louisiana that where State ownership extended to the ordinary high water line, such line remained permanently fixed at the high water elevation existing at Statehood. *State v. Jefferson Island Salt Mining Company,* 183 La. 304, 163 So. 145, 153 (1935).[15]

Bonelli was decided over 6 years after the present case was tried, hence the present high water line was not at issue and no effort was made to establish it. The only information in the record with respect to the high water line is an admission in the pleadings that the high water elevation existing at the time of Statehood is the same as the traverse line shown on the township plat approved in 1842.

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14 As recognized in *Bonelli,* exceptions to that rule obtain only where the high water elevation has been lowered by action of the riparian owner himself, or in the exercise of the navigational servitude where the land exposed forms an integral part of the project and is needed to serve its purposes and goals.

15 This does not apply where the high water line moves inland by encroachment of the water body on the adjoining shore. In that situation the State acquires the newly submerged area under a different legal principle not here applicable. *Miami Corporation v. State,* 186 La. 784 173 So. 315 (1937).

In October, 1963 (some 4 years before this case was tried, and 11 years before it was decided), the Army Engineers placed in operation a system of water control at Turnbull Island where the Mississippi and Red Rivers flow into the Atchafalaya, such system being designed to artificially control the discharge of waters into the Atchafalaya River. Since completion of this installation, only optimum amounts of water from the above sources during both flood and ordinary stages are discharged into the Atchafalaya. It is likely that this project has resulted in the lowering of the high water elevation of water bodies in the Atchafalaya System, including Six Mile Lake, well below the elevation existing at the time of Statehood.[16]

The position of plaintiffs is that the necessary information appears in the record for determining the present high water line. In the record are calculated surface elevations of the area in dispute with relation to Mean Sea Level and also gauge readings reflecting daily high and low water stages in Six Mile Lake during the period 1932 to February 1963.[17] Using these gauge records during a so-called 18.6 year astronomical cycle beginning in 1944 and extending through the year 1962, plaintiffs averaged out daily highs at an elevation which extends as far inland as the ordinary high water line of 1812, and thus in-

16 The effect of water control on high water elevation was not pertinent in this case prior to the *Bonelli* decision and there is no evidence in the record with respect to this project. However, as a matter of common knowledge, readily ascertainable, this project may be judicially noticed by the Courts. Federal Rules of Evidence, Rule 201.

17 Defendants claim title to the ordinary low water line and this evidence was introduced as basis for calculating the low water elevation.

cludes the entire area in dispute. Plaintiffs' calculation, however, is not acceptable for obvious reasons.

The record does not show water stages at all during a 4-year period immediately preceding the trial of this case in 1967 and during an additional 7-year period which has since expired. Throughout that period of 11 years the water control installation of the Army Engineers was in operation and undoubtedly had a pronounced effect on the ordinary high water elevation of Six Mile Lake.

Plaintiffs' method of averaging daily highs is based on *Borax Consolidated v. The City of Los Angeles*, 296 U. S. 10, 56 S. Ct. 23 (1935), where that method was used to determine the mean high water line along a shore of the Pacific Ocean (Harbor of Los Angeles). *Borax* applies only to high water elevation determined by the course of the tides and has no application to water bodies like Six Mile Lake which have no absolute ascertainable level because of variations of flow from a number of causes. *U.S. v. Washington*, 294 Fed. 2d. 830 (1961), cert. denied 369 U.S. 817, 82 S. Ct. 828.

Except for strictly tidal waters where daily highs may be averaged to determine "mean high tide", the ordinary high water elevation is determined by physical markings on the ground from the ordinary flow of water as distinguished from peak flow or flood stages. *U. S. v. Claridge*, 416 Fed. 2d 933, (1969), cert. denied 397 U. S. 961, 90 S. Ct. 994.

It may be in the present case that changes in the high water elevation will not be evidenced by physical markings on the ground due to the relatively short time

since the water closure system was put in operation. In that case, any other competent evidence would be admissible for that purpose.

CONCLUSION

(Primary Federal Question)

Defendants drilled and completed 3 oil and gas wells in full reliance on the jurisprudence of this State which had been settled for a period of over 30 years.[18] The decision of the Louisiana Supreme Court on rehearing retroactively effected an unpredictible change in that law which not only transformed private property into public property, without compensation, but awarded the full fruits of defendants' mineral exploration, undertaken at great cost, to the State. The Due Process Clause of the Fourteenth Amendment applies as well to such action by a State Court as it does to legislative action. *Bonelli Cattle Company v. Arizona, supra.* As stated in Justice Stewart's concurring opinion in *Hughes v. Washington,* 389 U. S. 290, 88 S. Ct. 438, 442, the issue of an unpredictible change vel non in State law by State Court decision "inevitably presents a federal question for determination of this Court."

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18 Reliance on the running water body principle established by *First Amerada* and later approved in the *Esso* and *Cockrell* cases was fully justified. Some 16 years after *First Amerada* and 2 years after *Esso,* the present Senior Member of the firm now representing Gulf Oil Corporation in the instant case, recognized that *First Amerada* represented the property law of this State as to all bodies of moving water regardless of size or dimensions. Southwestern Legal Foundation, 10 Annual Institute on Oil and Gas Law and Taxation (1959), pp. 314-316.

The Alternate Federal Question)

The establishment by the Louisiana Supreme Court of the original high water line as opposed to the present high water line of Six Mile Lake as the limits of State ownership is directly contrary to the decision of this Honorable Court in the *Bonelli* case and presents a federal question for review under Rule 19.1(a) of the Revised Rules of this Honorable Court.

For the foregoing reasons, as herein elsewhere fully developed, this writ for certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX I

Reproduced Segment of Official State Map (Exhibit P-13)

FOLD OUT IS TOO LARGE TO BE FILMED

APPENDIX "II"

PETITION FOR REHEARING BY TEXACO INC.

SUPREME COURT OF LOUISIANA

No. 53,294
No. 53,295

STATE OF LOUISIANA, ET AL
Plaintiffs-Relators
versus

PLACID OIL COMPANY, ET AL, TEXACO INC., INTERVENOR,
Defendants-Respondents

PETITION FOR REHEARING

TO THE HONORABLE, THE SUPREME COURT OF THE STATE OF LOUISIANA:

The petition of TEXACO INC., Defendant-Respondent in the above entitled and numbered cause, respectfully represents that the judgment of this Honorable Court rendered herein on June 10, 1974 is erroneous and contrary to law and a rehearing should be granted herein, all on the grounds and for the reasons hereinafter set forth.

I.

The Court erred in holding that Six Mile Lake is a lake as opposed to a stream within the meaning of C.C. Arti-

cles 455, 509 and 510 and that the area between the ordinary high and ordinary low water lines of that water body and the accretions thereto belong to the State and not to the riparian owners.

II.

In so holding, the Court erroneously concluded (a) that the "running water body" principle applied in Amerada Petroleum Corporation v. State Mineral Board, 203 La. 473, 14 So. 2d. 61 (1943), and later recognized in Amerada Petroleum Corporation v. Case, 210 La. 630, 27 So. 2d. 431 (1946); Esso Standard Oil Company v. Jones, 233 La. 915, 98 So. 2d. 236 (1957); and State v. Cockrell, 162 So. 2d. 361 (1964), (Cert. denied 164 So. 2d 350), did not supplant the "expansive water body" rule of State v. Erwin, 173 La. 507, 138 So. 84 (1931), and (b) that in arriving at a decision on original hearing, the Court had given undue weight "to the existence of water current capable of forming accretions as a basis of classification".

III.

In reviving and applying the Erwin rule the Court cast aside the established jurisprudence of this State for a period in excess of 30 years with respect to the classification of water bodies for the purposes of C. C. Articles 455, 509 and 510, reached a decision in direct conflict with the rationale of the doctrine of accretion as fully supported by the historical derivation of the above code articles and leaned heavily on broad considerations of ecology, environment and the public fisc which are not pertinent to the issues of this case. By the decision so reached, the

Court seriously eroded the rights of riparian ownership in the State of Louisiana.

IV.

The so-called "multiple factor test" adopted by the Court for classifying water bodies is in effect only a restatement of the rule of the Erwin case, and the classification of Six Mile Lake as a "lake" under that test was erroneous and invalid on several grounds:

1. The finding by the Trial Court, the Court of Appeal and this Court on original hearing that Six Mile Lake annually carries off a substantial portion of the tremendous volume of water flowing to the sea through the Atchafalaya River has not been changed on rehearing and remains the principal factual basis of this case. The official State map dramatically illustrates that Six Mile Lake forms an integral part of the dynamic water system of the Atchafalaya Basin and vividly underscores its capacity as a body of running water of tremendous force.

2. The rationale of the doctrine of accretion fully supports the idea that the laws of accretion were intended to have particular application to water bodies which are endowed with the capacity for carrying and depositing sedimentary loads and changing their shore lines and bodies of running water fit principally into that category. The historical derivation of our Code Articles on this subject lends full support to this principle.

3. In classifying Six Mile Lake as a lake the Court disregarded the principal characteristic of the water body for purposes of classification under C.C. Article 509 (i.e. a moving or running body of water physically endowed with the capacity for change) and emphasized other physical features which were either not supported by the record or have pertinence only in the limited fields of geology or cartography. The State expressly admitted in its Application for Writs that the issue before the Court is the classification of the water body under our laws relating to accretion and dereliction and not according to terminology which may prevail in other fields. (State's Application for Writs, page 30).

4. The action of the Court as set forth in paragraph 3 above was based on the erroneous premise that if the capacity to form accretions is the test for classification, a minimal amount of accretion in any type of water body would bring the same within Civil Code Article 509 because the presence of accretions proves up capacity to form them. This simplistic approach disregards the admitted fact that Six Mile Lake is a dynamic body of running water carrying a substantial portion of the waters of the Atchafalaya Basin to the Gulf and erroneously places that water body in the same legal category as relatively still or immobile bodies of water having no real capacity for undergoing physical change but in which minimal accretions of an inconsequential nature may have formed.

V.

The Court further erred in citing the following physical characteristics of Six Mile Lake in support of its decision either because they do not justify its classification as a lake under C.C. Article 509 or do not reflect conditions existing at the time of Statehood, viz:

1. Six Mile Lake has a thalweg of only 8 feet. To the contrary Cathcart found immediately after Statehood that the water body had a channel of 4-1/2 fathoms, or 27-1/2 feet.

2. It is subject to tidal action and has brackish water. The record shows that the same applies to the Mississippi River at New Orleans.

3. The current of Six Mile Lake is substantially less than that of the inflowing River; 75% of the sedimentation is deposited in the lake and only 25% is carried out. These considerations have no bearing on the classification of a water body under C.C. Article 509. In any event, they do not represent conditions existing in 1812. The Atchafalaya River Study, Vol. II, Plate A-28, shows that since 1930 extensive alluvial deposits were made in the bed of Six Mile Lake extending southward from the mouth of the Atchafalaya, and little or no deposits of that nature were made prior to that time. These changed conditions resulted from increased current velocity in the Atchafalaya River caused by channel work of the U.S. Engineers in recent years.

4. Six Mile Lake is comparable to Lake Pontchartrain and Lake Calcasieu. This is dramatically disproven by comparison of Six Mile Lake with the coastal lakes as shown on the official State Map from the standpoint of shape, configuration, water-shed and dynamics of the water systems involved. Additionally, Lake Pontchartrain is sui generis as an "Arm of the Sea" and Lake Calcasieu was involved in and depends on the Erwin case for its classification and its physical characteristics are in no way comparable to Six Mile Lake.

5. Six Mile Lake is one of the five largest water bodies in Louisiana, it is many times larger than the river that enters it, and it has been designated as a lake on official maps. These considerations do not detract from the inherent capacity of Six Mile Lake as a body of running water to form accretions and have no bearing on its classification under legal provisions which seeks to regulate the accretionary process.

VI.

The wells involved in this case were located and drilled on the faith of the principles of property law announced and applied in the first Amerada case and fully recognized in the other cases above cited, and the return to the Erwin rule effected a retroactive change in such law which was "unpredictable in terms of relevant precedents" and resulted in depriving petitioner and the other defendants of their property without due process of

law and the taking of private property for public use without compensation all in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and Article 1, Section 2 of the Louisiana Constitution of 1921.

VII.

The unpredictability of the present decision was made even more apparent by the unanimous action of this Court in denying writs in the Cockrell case on the stated ground that the Court of Appeal made no error of law in finding that Six Mile Lake was a stream within the purview of the Code Articles referred to hereinabove. Such action by the Court, with the size, dimensions and other physical characteristics of Six Mile Lake before it, reflects a legal ruling in direct conflict with the present decision.

* * *

Alternatively and only in the event that the Court declines to grant a rehearing on the foregoing grounds and its holding becomes firm that the State owns the bed of Six Mile Lake up to the ordinary high water line, then petitioner further avers:

VIII.

The decision of this Court is erroneous in holding that the State's title extends to the ordinary high water line of Six Mile Lake as it existed when the State was admitted to the union in 1812 as opposed to the present ordinary high water line of that water body. Title to the area between

these two elevations involves a federal question determinable under federal law.

IX.

Under Bonelli Cattle Company v. Arizona, 94 S.Ct. 517 (1973), federal law determines the nature and extent of the State's title to the bed of an equal footing water body such as Six Mile Lake, and under that law the State's interest being limited to the bed of the water body as a bed for navigational and related purposes, its title mechanically follows changes in the course or shore lines of the water body as the same may occur from time to time.

X.

Under federal law where the classification of a given water body is such that the ordinary high water line marks the limits of State ownership, the State's title extends only to the *present* high water line, and any area existing between such line and the high water elevation *at the time of Statehood* becomes an accretive area which, under federal law, enures to the title of the riparian owner. R.S. 9:1151 (Act 34 of 1952), purporting to protect rights under mineral leases against changes subsequently resulting from accretion and like processes, has no application to such an accretive area since rights therein are governed by federal law.

XI.

The present case was tried in 1967, over 6 years before the Bonelli decision, and evidence was not adduced to show the present high water line because it was then the

established jurisprudence of this State, and all litigants believed, that the original high water line of 1812 permanently fixed the limits of State ownership of all sovereign water bodies not falling within the purview of C.C. Articles 455, 509 and 510.

XII.

Gauge records were introduced in evidence for the period 1933 to February 1963, but the same do not establish the present ordinary high water line of Six Mile Lake. In October 1963, approximately 4 years before this suit came to trial, a project undertaken by the U.S. Engineers at Old River to prevent capture of the Mississippi River by the Atchafalaya River was completed and established effective artificial control of the discharge of waters of the Mississippi into the Atchafalaya. Since then only optimum amounts of water under normal and flood conditions are discharged into the Atchafalaya Basin and this artificial control has undoubtedly reduced the ordinary high water elevation in Six Mile Lake far below the elevation existing in 1812 thereby creating out of the area in dispute an accretive area which enures to the riparian owners under federal law. An identical situation was the effect of the Hoover dam on the high water elevation of Colorado River as shown in the Bonelli case.

XIII.

In their brief on rehearing, plaintiffs submitted to the Court their calculation of existing high water line (which

they say includes all of the area in dispute) as determined from guage records covering the period from 1933 through February 1963. In accepting such calculation as a basis for decision here the Court erred in that (a) the data used reflected conditions existing prior to the establishment of water control at Old River and do not enable calculation of the ordinary high water elevation in Six Mile Lake since the water control project was completed; and (b) even with respect to conditions existing prior to water control, plaintiffs' calculation is incorrect as plaintiffs averaged in only the daily highs of the high water or flood season and omitted daily highs of the remainder of the year, all in face of the rule that the high water elevation is determined from the ordinary flow as opposed to the "peak flow or flood stage" of the water body. United States v. Claridge, 416 Fed.2d 933 (Cert. denied 397 U.S. 961, 90 S.Ct. 984).

XIV.

Only by granting a rehearing can this Court give full consideration to the effect of the present high water line of Six Mile Lake on the State's claim to the area in dispute under federal law, and such rehearing should be granted in the interest of justice and in due course this case remanded for the introduction of the necessary evidence to establish that line.

WHEREFORE, petitioner prays that a rehearing be granted herein on the grounds set forth in paragraphs I through VII of this petition and that in due course the judgment rendered in this case on June 10, 1974 be annulled and set aside and that judgment be rendered in

favor of Defendants-Respondents rejecting Plaintiffs' demands and dismissing their suit.

Alternatively and in the event a rehearing is denied on said grounds, petitioner prays that a rehearing be granted with respect to the location of the *present* ordinary high water mark of Six Mile Lake, and that after due proceedings had this case be remanded to the lower Court for trial of that question.

Respectfully submitted,

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/s/ CHARLES F. BAILEY
Attorneys for Texaco Inc.
Defendant-Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of this petition for rehearing has been deposited in the United States Mails at Lafayette, Louisiana, properly addressed, with postage prepaid, to each of the opposing attorneys of record on this 21st day of June, 1974.

/s/ CHARLES F. BAILEY
Charles F. Bailey

Filed: June 24, 1974
/s/ HAROLD A. MOISE, JR.
Clerk, Louisiana Supreme Court

APPENDIX "III"

ORDER OF COURT DENYING REHEARING

UNITED STATES OF AMERICA
STATE OF LOUISIANA

SUPREME COURT OF THE STATE OF LOUISIANA

New Orleans, 70112

New Orleans, Friday, August 30, 1974 (Date of Entry)

Court was duly opened pursuant to adjournment. Present Their Honors: Joe W. Sanders, Chief Justice, Frank W. Summers, Mack Barham, Albert Tate, Jr., John A. Dixon, Jr., Pascal F. Calogero, Jr. and Walter F. Marcus, Jr., Associate Justices.

REHEARING REFUSED:

53,294 State et al v. Placid Oil Co.
53,295 (On Rehearing)
2 applications
SUMMERS, DIXON and MARCUS, J. J., are of the opinion that a rehearing should be granted.

I, Harold A. Moise, Jr., Clerk, Supreme Court of Louisiana, do hereby certify the above to be a true and correct extract from the minutes of this Court.

IN WITNESS WHEREOF, I hereunto sign my name and affix the seal of the Court aforesaid, at the City of New Orleans, this the 16th day of September, A.D., 1974.

/s/ HAROLD A. MOISE, II
Clerk,
Supreme Court of Louisiana

APPENDIX IV

Reproduced Segment of Exhibit P-10-A

FOLD OUT IS TOO LARGE TO BE FILMED

APPENDIX V

Reproduction of Official Township Plats for Township 11 South, Range 9 East and Township 11 South, Range 10 East

FOLD OUT IS TOO LARGE TO BE FILMED